results.[8] By replacing four existing price improvement programs with one comprehensive program that will incorporate (as a minimum threshold) the level of price improvement currently available, the Exchange can afford its specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than existing alternatives.

III. Discussion

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).[9] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5) [10] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that SuperMAX 2000 should provide CHX specialists with greater flexibility to respond to customer price improvement requirements than the four CHX programs within the MAX system currently in use. The Commission also believes that SuperMAX 2000 will simplify the Exchange's existing price improvement framework by eliminating the four existing price improvement programs and replacing them with one comprehensive program that incorporates as a minimum threshold the level of price improvement that was available under the four previous price improvement programs. Finally, the Commission believes that implementation of SuperMAX 2000 should afford CHX specialists greater flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or better than the price improvement alternatives currently available.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice, the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. Amendment Nos. 1 and 2 made only minor, technical changes to the proposed rule language, and did not alter the substance of the proposal.[11] Furthermore, because SuperMax 2000 is designed to provide price improvement alternatives that incorporate as a minimum threshold the level of price improvement currently available under the price improvement programs previously in use, the Commission believes it is reasonable to implement SuperMAX 2000 on an accelerated basis to allow specialists and investors to reap the anticipated benefits of this program as soon as possible. For these reasons, the Commission finds good cause for accelerating approval of the proposal rule change, as amended.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 6(b)(5) [12] in particular.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CHX–00–37), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[8] The Exchange anticipates that its existing price improvement programs, which have been amended on a pilot basis to include decimal price increments, would become obsolete once the pilot expires on February 28, 2001. In accordance with an Exchange rule approved by the Commission, the four existing price improvement programs would be deemed deleted from the Exchange's rules upon the completion of the securities industry transition to a decimal pricing environment. *See* Article XXB, Rule 4, which provides, in pertinent part, that all rule references to fractional price increments shall be deemed deleted.

[9] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] Amendment No. 1 was published for comment. *See* footnote 4, *supra*. Because Amendment No. 2 made only technical, non-substantive changes to the proposal, there is no need to solicit comments on Amendment No.2

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43763; File No. SR–NYSE–99–24)]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Establishing XPress Orders and Quotes

December 21, 2000.

I. Introduction

On June 10, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2], a proposed rule change establishing XPress orders and quotes. The proposed rule change was published for comment in the **Federal Register** on August 11, 1993.[3] The Exchange filed Amendment Nos. 1 [4] and 2 [5] to the proposal on September 13, 1999 and August 21, 2000, respectively. The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 1 and 2.

II. Description of the Proposal

In order to enhance participation in its auction market, the Exchange proposes to create a new type of order,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41703 (August 4, 1999), 64 FR 43802.

[4] *See* letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission (September 10, 1999) (''Amendment No. 1''), Amendment No. 1 specifies that XPress orders and XPress quotes must consist of at least 25,000 shares and XPress quotes must be displayed for at least 30 seconds.

[5] *See* letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission (August 17, 2000) (''Amendment No. 2''). Amendment No. 2 changes the original proposal to allow partial executions when an XPress order is entered against a valid XPress quote that is reduced below the minimum size requirement before the XPress order is received at the specialist's post. Amendment No. 2 provides examples of situations where XPress orders would receive partial executions. Amendment No. 2 also provides that is a SuperDOT order is received after an XPress order, but just before a second XPress order, the SuperDOT order will be executed, to the extent possible, with the XPress orders, in time priority. Finally, Amendment No. 2 amends proposed Rule 13 to require XPress orders to be entered before 3:58 p.m. or two minutes prior to any other closing time on the Exchange and clarifies that price improvement does not remove bids and offers from the floor.

known as an ''XPress order.'' The Exchange believes this order type responds to the needs of market participants for ''clean'' executions when entering large-size orders in response to bids and offers which have been displayed for a minimum time period.

The proposed rule change consists of amendments to NYSE Rule 13, defining XPress orders and XPress quotes, and amendments to NYSE Rule 72, describing the requirements for executing XPress orders. NYSE Rule 13 defines an XPress order as an order of at least 25,000 shares to be executed against a displayed XPress quote, or at an improved price, if obtainable.[6] Under NYSE Rule 13, the size of the XPress order could not exceed the size of the XPress bid or offer against which it was to be executed at the time of order entry. Any portion of the XPress order that is not executed against a displayed XPress quote is cancelled.[7] XPress orders would be delivered to the specialist's post via the Exchange's automated order routing system. Multiple XPress orders in the same stock would be executed in strict time priority with respect to each other and with respect to other orders.

An XPress quote is defined as a published bid or offer of at least 25,000 shares that is displayed at the same price for at least 30 seconds.[8] If the XPress bid or offer price changed, the quote would have to be displayed at the new price for at least 30 seconds before it would be XPress eligible. Generally, if the size of the quote drops below 25,000 shares, the quote would no longer be XPress eligible.

However, if an XPress order is entered against a valid XPress quote, but the quote has been reduced below 25,000 shares and is no longer XPress eligible when the order is received at the specialist's post, the Exchange proposes that the XPress order receive a partial execution.[9] Any portion of the XPress order not executed, at either the XPress price or an improved price, would be cancelled. The Exchange provided the following examples of situations where an XPress order may be entered against a valid XPress quote that is reduced below 25,000 shares when the order is received at the specialist's post.[10]

First, assume there is an XPress offer for 25,000 shares at a price of $20. An XPress order to buy 25,000 shares is submitted, but a member in the crowd takes 5,000 shares of the offer before the specialist can interact with the XPress order. The Exchange proposes that the XPress order be permitted to buy the remaining 20,000 shares offered, with 5,000 shares of the XPress order cancelled.

Second, assume there is an XPress offer for 75,000 shares at $20, and three XPress orders of 25,000, 25,000 and 35,000 shares are received within a nearly simultaneous time frame.[11] It is proposed that the first two XPress orders be executed for 25,000 shares each, and that the third XPress order receive a partial execution of 25,000 shares, with 10,000 shares cancelled.

Under Supplementary Material .50 to Rule 72, once the specialist has represented an XPress order in the crowd, no part of the XPress bid or offer against which the XPress order is to be executed can be withdrawn, except to provide price improvement to all or part of the XPress order.[12] A member providing price improvement to an XPress order would have to trade with all other market interest having priority at the price before trading with the XPress order. The remainder of the XPress order, if any, would be executed at the XPress bid or offer price up to the number of shares then available, regardless of whether the number is less than the minimum size for an XPress quote. All or part of the balance of an XPress bid or offer could be withdrawn after an XPress order has been executed and before any subsequent XPress orders are represented.

Under the proposal, an execution of an XPress order, in whole or in part, would not remove bids or offers from the floor. Therefore, an XPress order executed in part, at an improved price, would retain its priority[13] (*i.e.* be first in line for execution) and would not have to compete (*i.e.,* be on parity) with newly entered bids or offers at the XPress quote. Without this proposed provision, NYSE Rule 72(f), which provides that a trade clears the floor, would apply. The Exchange believes that this result would defeat the purpose of the XPress order.

In addition, an intervening SuperDOT order (*i.e.* a SuperDOT order received immediately between two XPress orders) would not remove bids or offers from the floor.[14] For example, assume there is an XPress offer of 75,000 shares at $20. An XPress order to buy is received for 40,000 shares followed closely by a SuperDOT limit order to buy 1,000 shares at $20, and another XPress order to buy for 40,000 shares. In this example, the Exchange proposes that 75,000 shares trade at $20, with 40,000 shares allocated to the first XPress order, 1,000 shares to the SuperDOT limit order, and 34,000 shares to the second XPress order, with 6,000 shares of this order cancelled. Otherwise, the intervening SuperDOT order would clear the floor and the second XPress order would not be assured an execution.[15]

The effective date of the proposed rule change will be based on the implementation of enhancements to NYSE systems as well as the state of readiness of the member firm community. Presently, implementation of the proposal is targeted for the first quarter of the year 2001.[16]

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.[17] In particular, the proposal is consistent with Section

[6] A customer's individual orders may not be aggregated to become an XPress order. For example, a customer's three separate 10,000 share orders could not be aggregated to be designated as XPress. Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 13, 2000).

[7] If no portion of the XPress order is executed because the entire XPress quote has been executed against by the time the XPress order is received at the specialist's post, the entire XPress order will be canceled. Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 13, 2000).

[8] *See* Amendment No. 1, *supra* n.4. The Exchange has indicated that it may, in the future, submit a proposed rule change to reduce the minimum size for XPress orders and quotes to 15,000 shares and to reduce the 30-second minimum requirement for XPress quote designation.

[9] *See* Amendment No. 2, *supra* n.5. Under the original version of the proposal, if an XPress order was received at the specialist's post and the quote was no longer XPress, the XPress order would be cancelled.

[10] *See* Amendment No. 2, *supra* n.5.

[11] ''Within a nearly simultaneous time frame'' means within seconds. Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 21, 2000).

[12] XPress orders that receive partial execution are also eligible to receive price improvement. Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 21, 2000).

[13] NYSE Rules 71 and 72 provide that the first bid made at the highest price has priority. Similarly, the first offer at the lowest price has priority.

[14] *See* Amendment No. 2, *supra* n.5.

[15] Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Jack Drogin, Assistant Director, Division, Commission, Terri Evans, Special Counsel, Division, Commission, and Sonia Patton, Staff Attorney, Division, Commission (October 10, 2000).

[16] Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 21, 2000).

[17] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

6(b)(5) of the Act [18] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In addition, the Commission believes that the XPress system is consistent with Congress's finding in Section 11A(a)(1)(C)(i) of the Act [19] that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the economically efficient execution of securities transactions.

The Commission believes that the XPress system should assure the economically efficient execution of securities transactions by providing a means for the execution of large orders from off the floor, In addition, the Commission believes that the XPress system should encourage market participants, particularly institutional investors, to display orders of at least 25,000 shares, which may attract more order flow and increase the depth and liquidity of the Exchange's market to the benefit of investors and the public interest. The Commission notes that the 30 second display requirement provides brokers and non-XPress orders the opportunity to interact with the quote before it becomes XPress eligible. The Commission also believes that the proposed rule change could help to perfect the mechanism of a free and open market by allowing market participants, particularly institutional investors, to more quickly execute large orders from off the floor. The Commission also believes that permitting the prompt and efficient execution of large orders, with the opportunity for price improvement, could strengthen the NYSE market and benefit market participants.

The Commission finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 1 amends the proposed rule language to clarify that the minimum number of shares required for an order to be designated as XPress is 25,000 and that a published bid or offer must remain at the same price for at least 30 seconds to be designated an XPress quote. Amendment No. 2 clarifies that partial executions are permitted by the system, that intervening SuperDOT orders will not clear the floor, and that XPress orders cannot be entered within two minutes of the close of trading. The Commission believes that these amendments should assist members, investors, and market participants in general in understanding the requirements of XPresss quotes and XPress orders and how orders are executed on the system. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[20] to approve Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2, including whether these amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–99–24 and should be submitted by [insert date 21 days from the date of publication].

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSE–99–24), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

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[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C)(i).

[20] 15 U.S.C. 78f(b)(5) and 78s(b).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43762; File No. SR–Phlx–00–64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Late Charges and Penalties for Non-Payment

December 21, 2000.

I. Introduction

On September 18, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its By-Law Article XIV, Section 14–5, ''Penalty for Non-Payment,'' and Phlx Rule 50, ''Late Charge,'' to clarify and provide consistent time periods for reporting delinquent accounts to the Phlx's Finance Committee and the Phlx's Board of Governors (''Board'').

The proposed rule change was published for comment in the **Federal Register** on November 8, 2000.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Phlx proposes to amend Phlx Rule 50 to: (1) Impose a late charge on accounts unpaid 30 days after the date of the original invoice, rather than accounts unpaid 40 days after the date of the original invoice; (2) reduce the amount of the late charge from 2% simple interest to 1% simple interest for each 30-day period or fraction thereof, calculated on a daily basis, during which the accounts payable to the Phlx remain outstanding; and (3) provide that the Phlx's Finance Committee may waive the amount of the late charge, or a portion thereof, if the amount falls within guidelines established by the Board. The Phlx also proposes to eliminate from Phlx Rule 50 the requirement that the Phlx's Controller notify the board when an amount due to the Exchange remains outstanding for 90 days. Instead, Phlx Rule 50, as amended, requires the Phlx's controller to notify the Finance Committee when an amount due to the Phlx remains unpaid 50 days after the date of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43489 (October 27, 2000), 65 FR 67031.